

## **CHAPTER 3. CLASSIFICATION, SERVICES AND COMPENSATION**

### **SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE**

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#### **4A:3-2.1 General provisions: State service**

(a) The Senior Executive Service (abbreviated "SES") shall consist of those specific positions in State government allocated by the Merit System Board to the SES in accordance with N.J.S.A. 11A:3-3 and this subchapter.

(b) No more than 1,200 positions shall be allocated to the SES in all departments.

(c) No less than 85 percent of all positions allocated to the SES shall be filled by individuals with career status. Career status means permanent status in a career service title in State government, including those on an approved leave of absence from a permanent career position.

#### **4A:3-2.2 Designation of SES positions: State service**

(a) To be allocated to the SES, a position must have substantial managerial, policy influencing or policy executing responsibilities. Allocations to SES shall be determined on the basis of specific positions, not by job titles or category.

1. A substantial managerial or policy executing position is one which has significant control of substantial resources, responsibility for major programmatic outcomes and/or responsibility for a major organizational unit.

2. A policy influencing position is one which has influence on the department's/agency's direction, mission, priorities, major goals or objectives.

(b) An SES position shall only report to a higher level unclassified position or to another SES position.

(c) The Commissioner shall establish procedures for the submission of executive/senior management plans for each department.

1. Each department head shall submit an executive/senior management plan to the Commissioner which shall include the department's SES position requests.

2. A position allocated to the SES shall be part of the executive/senior management cadre of a department.

3. The Commissioner may request information about the position necessary to process the SES position request.

4. If the original major functions and responsibilities of a vacant position allocated to the SES change but are not included in the executive/senior management plan of the department, the new functions of the position shall be reviewed by the Commissioner before posting for or filling the position.

(d) At the discretion of a department head, an appointing authority may move an SES member from one position allocated to the SES to another position allocated to the SES. The appointing authority shall review the compensation of the SES member at that time and may recommend a salary adjustment, if appropriate. An appointing authority so moving an SES member shall notify the Department of Personnel of this change.

(e) An appointing authority may move an SES member to cover an emergency assignment or other emergent need for six months or less, at the discretion of the department head. The appointing authority need not notify the Department of Personnel of such movement.

#### **4A:3-2.3 SES appointments: State service**

(a) The SES selection process includes the following:

1. Notice of vacancies in SES positions shall be posted, at a minimum, within the department in which the vacancies exist. Posting is not required if the department selects the incumbent for a position at the time of the initial allocation to the SES.

i. A department head wishing to circulate a Statewide posting of the vacancy shall do so through the Department of Personnel.

2. The department shall contact the Department of Personnel for assistance in recruiting to fill SES vacancies before recruiting applicants outside State service. Where possible, SES members from other departments will be encouraged to apply for a vacant SES position when it will not be filled from within the requesting department.

3. If the position is an initial conversion of a position previously assigned to the career service, the appointing authority shall notify in writing the incumbent of the availability of the SES position and provide the individual with the opportunity to complete the entire SES selection process.

4. The departmental selection process is at the option of the department. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

5. The department head shall forward his or her selection(s) to the Commissioner.

6. Final appointment shall be subject to approval by the Commissioner.

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same organizational unit for which he or she is qualified at the same class code.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the placement of the non-appointed incumbent:

i. Reassign the employee to a vacant position;

ii. Separate a provisional employee without underlying career status and reassign the non-appointed incumbent to the position; or

iii. Return an employee, serving provisionally in the highest permanent title held by the non-appointed incumbent, and reassign the non-appointed incumbent to the permanent title vacated by the provisional employee.

4. The organizational unit and the non-appointed incumbent may agree to use the following optional procedures:

i. The non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series for which the employee is qualified in the same or another organizational unit.

ii. The career status and compensation rights of the non-appointed incumbent shall be determined in accordance with the rules governing voluntary demotion. See N.J.A.C. 4A:4-7.8.

iii. If the organizational unit offers the non-appointed incumbent options under either (b)3 or 4 above, the employee may accept either option.

iv. If the organizational unit offers only the option under (b)3 above, the non-appointed incumbent shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the placement of a non-appointed incumbent under (b)3 or 4 above. See N.J.A.C. 4A:8.

6. If the placement of the non-appointed incumbent causes a reduction in salary of the employee, the department head may, at his or her discretion, recommend to the Commissioner placement of the employee at a salary no greater than the salary the employee received in the permanent title held immediately prior to non-appointment.

(c) A non-appointed incumbent without career status may be:

1. Reassigned to an unclassified title;
2. Reassigned to a vacant career service title for which no eligible list exists; or
3. Terminated.

#### **4A:3-2.4 SES performance evaluation: State service**

The performance of all SES members shall be evaluated annually by the department head or designee in accordance with evaluation procedures set by the Commissioner.

#### **4A:3-2.5 SES compensation: State service**

(a) Positions allocated to the SES shall be designated as no-range, which means that no class code is designated for the position. However, salary payments for SES positions are subject to restrictions established by the Commissioner and the Director, Division of Budget and Accounting, under their legal authority.

(b) An incumbent with career status whose position is allocated to the SES, and who is appointed as an SES member, shall receive an initial salary that is no less than the salary at the time of his or her appointment as an SES member.

(c) After initial appointment, salary advancement shall be based upon performance. There shall not be specific steps within each salary level, nor increments based upon length of service.

#### **4A:3-2.6 SES benefits: State service**

(a) Effective January 1, 1997, SES members with underlying career service status shall be entitled to the same amount of vacation, sick and administrative leave received by career service employees. See N.J.A.C. 4A:6-1.2, 1.3 and 1.9. SES members without underlying career status shall be subject to the unclassified leave plan, if any, utilized in his or her department.

(b) SES members shall be entitled to participate in all leave-related programs open to career service employees and employees in the executive/senior management cadre of a department, including State family leave, Federal family and medical leave, donated leave and the voluntary furlough program. See N.J.A.C. 4A:6.

(c) An SES member may apply for a career service promotional examination in his or her current unit scope as long as the permanent title he or she held immediately prior to SES appointment would have made the SES member eligible for the examination.

#### **4A:3-2.7 (Reserved)**

#### **4A:3-2.8 (Reserved)**

#### **4A:3-2.9 Separation from the SES: State service**

(a) Any SES member may be separated from the SES at the discretion of the department head upon 20 days' notice. A copy of the separation notice shall be provided to the Commissioner at the same time it is sent to the employee.

(b) In case of removal of an SES member with career status from State service, or return to a lower level than provided in (c) below, the procedures set forth in N.J.A.C. 4A:2-2 (major discipline) shall apply.

(c) An employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the return of the employee to his or her career status:

- i. Reassign the employee to a vacant position/title;
- ii. Separate a provisional employee without underlying career status and reassign the returning employee to the position/title;
- iii. Return an employee serving provisionally in the permanent title previously held by the returning employee to his or her permanent title and reassign the returning employee to the position/title vacated by the provisional employee;
- iv. If the returning employee's last held permanent position/title no longer exists, or his or her last held permanent title is no longer appropriate as a result of the position's allocation to SES, the employee shall have lateral and demotional rights determined as if the title currently exists.

4. The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

- i. The employee may accept appointment to other titles at the same or lower class code, in the same or a different title series for which the employee is qualified in the same or another organizational unit.

- ii. The status and compensation rights of the returning employee shall be determined in accordance with applicable rules.

- iii. When the organizational unit offers the employee options under either (c)3 or 4 above, the employee may accept either option.

- iv. If the organizational unit offers only the option under (c)3 above, the employee shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the return of a permanent employee under (c)3 or 4 above. See N.J.A.C. 4A:8.

6. The employee shall have permanent status in the title immediately upon return to the career service, and shall have seniority as if it had continued to accrue in the permanent title held immediately prior to SES service.

7. Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:

- i. The salary shall in no event be greater than the salary earned in the SES; and
- ii. If the minimum guaranteed in (c)7 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary.

iii. The department head may, at his or her discretion, recommend to the Commissioner placement of the employee at a higher salary than the minimum.

(d) If the position to which an SES member is appointed or vacated or abolished due to a reduction in force, and the SES member has career status, the SES member shall have lateral, demotional and special reemployment rights based upon the permanent title held immediately prior to SES appointment.

(e) Individuals without underlying career status who are separated from the SES may be:

1. Appointed to an unclassified title;
2. Appointed to a vacant career service title for which no eligible list exists; or
3. Terminated.